(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, and

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration, and

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Comment

The proposed development is consistent with the above principles given environmental protection measures and enhancements are proposed and the lifecycle funding of infrastructure will be undertaken by the developer and then the occupants.

The Concept has significant sustainable elements including self funding water, sewer, stormwater, roads, open space management and riparian zone rehabilitation.

Protection of the environment has been a fundamental consideration of the assessment and this is reflected in the proposed conditions of consent and the requirement for management plans to be prepared for mitigation of impacts and ongoing protection of environmental resources.

Clause 8 – Consent considerations

Objectives of zone

2(d) Village

The objective of the zone is as follows-

to provide for residential development and a full range of services and facilities

traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.

The proposed concept is not just for residential development. The proposal includes a mixed village centre that includes retail/commercial uses. Tourist and special uses are also part of the concept along with open space for sport, recreation and markets. The mix of uses proposed support the Village concept and the objective of the 2(d) zone.

The proposal is not contrary to the objective of the zone.

Rural 1(a) zone objectives are as follows-

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement*

The sewer and water infrastructure located in the 1(a) Rural land will not prevent the primary objective being achieved. The effluent is proposed to be used by land application which will facilitate agricultural use.

Aims and objective of the plan that are relevant to the development

See above regarding aims of the plan

Cumulative impact

The proposal will have both positive and negative cumulative impacts on the community, locality and catchment.

Overall the proposal will not have an unacceptable cumulative impact on the community, locality, catchment or the Tweed area as a whole provided the recommended conditions of approval are imposed and complied with.

The negative cumulative impacts range from the impact on the environment such as the Tweed River to reliance on private motor vehicles for transportation given the isolated location. Mitigation of these impacts include a 50 metre buffer along the Tweed River the together rehabilitation of the riparian zone and provision of a community bus for transport.

It could be argued that the proposal would have less adverse cumulative impacts than a standard rural residential subdivision.

The proposal will provide an alternative form of residential living compared to standard subdivisions with a mix of residential styles and on site community infrastructure.

It could be argued that the adverse cumulative impact accrued by the relative isolation of the development outweighs the positive attributes of the proposal. However, it is considered that a legitimate attempt has been made to undertake a development that is based on sustainable principles and to incorporate measures to mitigate adverse impacts.

Clause 15 - Essential Services

Council is required to be satisfied that arrangements have been made for the provision of water, sewage and drainage. The arrangements are satisfactory. See section (b) for further comment regarding water and sewer.

A key aspect of the proposal is that the above infrastructure must be constructed, maintained, replaced and funded by the development. Council will not supply water, sewage or drainage services to the development. The development will be undertaken as a community title subdivision with management and funding responsibilities set out in the Community Management Statement which is required to be approved by Council.

Clause 16 - Height of Building

A three storey height limit apples to the site. The proponents have stated that three storeys won't be constructed for the peripheral units in the Village Housing precinct. A condition has been imposed limiting the Village Lots precinct to two storeys.

Three storey development across the entire site is not considered appropriate for the location. Three storeys in the central village area for design purposes is considered acceptable.

Clause 17 - Social Impact Assessment

Clause 17 requires consideration of the following-

(1) Objective
- to ensure proper consideration of development that may have a significant social or economic impact.

(2) Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.

(3) The socio-economic impact statement that the consent authority considers must do at least the following:

(a) identify the likely future impacts of the development on the affected community,
(b) analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like,
(c) determine if the impacts will cause a loss of amenity within the locality due to a net reduction in community services and facilities,
(d) determine and assess possible measures for the management or mitigation of likely impacts.

Comment

Whilst significant social or economic impact is not clearly defined a socio economic assessment has been submitted by the applicant. The report focuses on the projected decline of the population in the Kyogle statistical area. The report indicates that population projections by the Department of Planning show a fall in residential population for the Kyogle area of 300 (3%) over the next ten years, with a continuing decline until the resident population has fallen by 9% (880) by 2031.

The report states that the Nightcap Village will redress the adverse demographic conditions by–

- Increasing the local resident population by a projected 1,000. (More than offsetting the population decline currently projected for the Kyogle Area)

- Attracting residents with greater purchasing power and greater disposable income, and young families with greater household expenditure and greater retail and personal services needs.

- Attracting self-employed business people and their employees with business and employee needs best met locally

- Providing recreational and visitor opportunities that will encourage both residents and visitors to spend more time, and money in the region.

- Local employment benefits will be at least 155 jobs (permanent, fulltime equivalent (fte) jobs, provided at Nightcap Village after its development)

- Regional employment benefits will be at least 230 fte jobs (comprising 155 fte jobs in the village and a flow on effects that create 80 additional local jobs)

- The development will not result in any significant impost on existing human services and facilities.

- There should be no noticeable adverse impact on the provision of retailing and personal services elsewhere, either locally or in the Region.

It is considered that the socio economic impact of the proposal will be mixed. There will be some positive benefits as outlined above and there will be some negative impacts including increased demand on services such as emergency services and community facilities. However it should be noted that the Village will be developed in stages over several years probably up to ten years at least providing time for services to adjust to population growth.

Clause 19 and 20 Subdivision

Stage 1 includes a 6 lot subdivision with three lots within the land zoned 1(a) Rural and 3 lots within the 2(d) village. Proposed lots 10, 11 and 12 are zoned Rural 1(a) and are 89.47ha, 121.5 ha and 122.7 ha which exceeds the minimum lot size of 40 ha for the 1(a) zone. Proposed lots 13,14, and 15 are located in the 2(d) village zone and are 9.1ha , 16.44 ha and 16.77 ha in area. These lots will be further subdivided via community title and subject to future development applications. Council's development standards such as lot sizes are required to be met with Community Title subdivision.

Clause 22 Development near designated roads

Kyogle Road is a designated road.

The objectives of the this clause are-

- to protect and improve the capacity, efficiency and safety of designated roads.
- to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.
- to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads

Council has to be satisfied of the following-

(a) the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road.

Comment

The ultimate development will increase traffic movements on Kyogle Road. Council's contribution plan for roads includes improvements to Kyogle Road. Each subdivision, multi dwelling, commercial/ retail development will be levied contributions for the upgrading of Kyogle Road. Accordingly, and subject to levying the contributions the proposal is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the road when the improvements have been constructed.

(b) the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded.

Comment

A new intersection is proposed with the site and Kyogle Road to Austroads Standards. This will also include dedication of land to meet sight distance requirements. Parking will be undertaken within the site.

(c) the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road.

Comment

The new intersection will be in accordance with Council's requirements.

(d) where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage.

Comment

The development within the land zoned 1(a) is the ancillary aspects of the Village and is not in proximity of Kyogle road for commercial advantage.

(e) the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact.

Comment

The residential precincts are setback from Kyogle road to mitigate noise impact.

(f) the development would not detract from the scenic values of the locality, particularly from the point of view of road users.

Comment

The access and carpark will be the most visually prominent aspects from a road users point of view. A condition has been imposed requiring a landscaping plan to be submitted and approved for Stage1. Screening of the carpark area will be required as part of the plan.

(g) where practicable, access to the land is provided by a road other than the designated road.

Comment

In this instance alternate access is not practicable.

(h) in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:

(i) would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and

(ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and

(iii) would not compromise highway safety and efficiency, and

(iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.

Comment

Not applicable

Clause 31 Development adjoining waterbodies

This clause is satisfied by the inclusion of a 50 metre buffer along the Tweed River and the requirement for a rehabilitation plan of the environmental open space areas.

Clause 34 Flooding

See Section (b) for flooding assessment.

Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils.

Clause 39A bushfire

Council is required to consider the following-

(a) whether the development is likely to have a significant adverse effect on the implementation of any strategies for bushfire control and fuel management adopted by the Bushfire Control Office established by the Council for the area, and

(b) whether a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development (including any threat created or increased by the access arrangements to and from the development), and

(c) whether the increased demand for emergency services during bushfire events that is created by the development would lead to a significant decrease in the ability of the emergency services to effectively control major bushfires, and

(d) the adequacy of measures proposed to avoid or mitigate the threat from bushfires including:

(i) the siting of the development, and
(ii) the design of structures and the materials used, and
(iii) the importance of fuel-free and fuel-reduced areas, and
(iv) landscaping and fire control aids such as roads, reserves, access arrangements and on-site water supplies, and

(e) the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction.

In taking into account the matters required by the above, the consent authority must have regard to the provisions of the document entitled *Planning for Bushfire Protection*, prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the then Department of Urban and Transport Planning, and dated December 2001, and must be satisfied that those provisions are, as much as is possible, complied with.

Comment

The application was referred to the NSW Rural Fire Service under the integrated development provisions. The RFS has issued their terms and conditions which are attached to the proposed conditions.

The NSW Rural Fire Service was consulted regarding the impact of the proposal on the Service in the Kunghur area.

The RFS advised that the infrastructure requirements of the RFS are predicted annually in terms of the “standards of fire cover” required based on the current and predicted population. Urban areas are given ratings of village 1 or village 2 and requirements are subsequently indexed. Kunghur is classified as a Category 1 Village with an index of 6. The proposed development would not impact on the classification as Village 1 however the index would increase to 10.

To service a Category 1 village with an index of 10, the newly constructed post at Kunghur would require an additional Category 1 Tanker with 3,000 litre capacity and the estimated cost of such a tanker is $225,000. It could take up to 18 months between ordering and receiving such a tanker. Various upgrades to the post would also be desirable, for example the dimensions of the door to the garage housing the tankers may need to be amended to cater for a Category 1 tanker, the current car park could be resurfaced to ensure the vehicles of staff and volunteers are not obstructing the roadway in the case of an emergency and the post could be equipped with breathing apparatus. The RFS advise that it would not be desirable to relocate the post to be within the proposed village given that its current location is strategic to service the general area.

Conditions have been imposed to reflect the above requirements.

Clause 44 Archaeological sites

Council is required to consider the following-

(1) The consent authority may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a relic within the meaning of the *National Parks and Wildlife Act 1974*), or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if:

(a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and

(b) it has notified the Director-General of its intention to do so and taken into consideration any comments received from the Director-General within 28 days after the notice was sent, and

(c) it is satisfied that any necessary consent or permission under the *National Parks and Wildlife Act has been granted.*

Comment

An archaeological report has been submitted which identifies several sites that require management. The development has been modified to cater for the sites. Additionally further investigation is required at locations across the site prior to future stages proceeding. No known sites are proposed to be disturbed during stage 1 works.

The archaeological survey resulted in the recording of five open campsites and two isolated stone artefacts within the study area.

The proposal includes setting up a display area on the site for the heritage items.

The recommendations in the archaeological report are as follows-

i. Identified sites NV1 and NV4 and their associated areas of PAD as defined in **Figures 44-46** be preserved in relation to the proposed development and associated road and infrastructure. No subsurface impacts should occur in these areas.

ii. Identified sites NV3/MS2 and NV IF2 and their associated areas of PAD, and NV PAD1 as defined in **Figures 44-46** should be the subject of Aboriginal archaeological test excavations to determine their extent and significance prior to any future DA's for the Nightcap Village site. The s87 investigations may also guide further Staging Plans and DA's depending on whether parts of the investigation areas require preservation and/or interpretation. These excavations must be undertaken by a suitably qualified

archaeologist in consultation with the local Aboriginal community under a National Parks & Wildlife Act (1974) s.87 Aboriginal Heritage Impact Permit according to a suitable research design.

iii. Identified sites NV2 and NV5 and isolated artifact find NV IF1 should be the subject of a National Parks and Wildlife Act (1974) S.90 Aboriginal Heritage Impact Permit will collection and interpretation of the artifacts in consultation with the Aboriginal community. S.90 AHIP need only be sought if there are proposed future impacts.

iv. Further discussion should be undertaken with the local Aboriginal community in relation to the proposal for an onsite Aboriginal history and heritage interpretive display.

v. Archaeological survey of the sewerage and water supply infrastructure should be undertaken prior to development. The components requiring survey are the Water supply dam site and gravity feeds between the STP and the irrigation areas.

vi. A copy of the current report has been sent to representatives of:

Tweed Byron Local Aboriginal Land Council;
Tweed Aboriginal Consultative Committee;
Council's Cultural Heritage Officer; and
Department of Environment and Climate Change

Clause 52 zone map overlay

Part of the rural lots are within the Byrill Creek catchment area however no development is proposed within these areas.

North Coast Regional Environmental Plan 1988

Clause 12: Impact on agricultural activities

The proposal will not cause a loss of prime crop or pasture land. Buffers between the Village and the 1(a) Rural and are proposed.

Clause 15: Rivers, streams and wetlands

A 50m buffer is proposed to the Tweed River. The buffer area is subject to the preparation of a riparian management plan. The Department of Water and Energy have provided their terms and conditions for an approval under the Water Act/Rivers and Foreshores Improvement Act.

Clause 43: Residential development

Clause 43 requires the following considerations-

(1) The council shall not grant consent to development for residential purposes unless:

(a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
(b) it is satisfied that the proposed road widths are not excessive for the function of the road,
(c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
(d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and
(e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

Comment

(a) The constraints (eg. slope, archaeological artifacts) of the site including buffers and the minimum lot size for dwellings in the 2(d) zone control the density. This is combined with the provision of water and sewerage infrastructure which limits the density of development.
(b) The public roads comply with Council's standards
(c) N/A
(d) Walkability within the village will be a feature given the proximity of dwellings to destination points. A condition requiring a community bus is recommended.
(e) Conditions have been imposed regarding erosion and sedimentation.

Clause 66: Adequacy of community and welfare services

The site is isolated from the main centres that provide community and welfare Services. Whilst an additional 1000 persons is likely to impact on various services this population is likely to take at least ten years to be reached. In this regard all services will be affected by the population growth of the Shire over this timeframe.

See above for comments regarding socio economic impact.

Clause 75: Tourism development and Clause 76: Natural tourism areas

The concept plan includes some small scale tourism that will be subject to future development applications. The matters for consideration can be addressed in detail at the time depending on the nature of the tourist uses proposed.

Clause 81: Development adjacent to the ocean or a waterway

Clause 81 requires consideration of the following-

(1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:

(a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,
(b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and
(c) the development is consistent with the principles of any foreshore management plan applying to the area.

(2) Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.

Comment

A 50m riparian buffer is proposed along the Tweed River, this an environmental protection buffer and not providing for public recreation space. A 50 meter separation distance is considered appropriate to protect the amenity of the River. Whilst there is no foreshore management plan a riparian buffer management plan is required to be prepared.

Clause 82. Sporting Fields or specialized recreation facilities

The proposal includes an oval for recreation purposes. The oval will not be owned or operated by Council. The oval will be community land managed by the community association.

State Environmental Planning Policies

Infrastructure SEPP (formerly SEPP-11 Traffic Generating Developments))

The application was considered by the Regional Traffic Committee on 15 February 2007. The Committee provided advice which resulted in significant amendments being made to the proposal for access.

SEPP No. 44 - Koala Habitat Protection

The site is known to contain three Primary Koala food tree species (two of which are listed on Schedule 2 of SEPP 44) and to contain evidence of Koala usage including scats and scratch marks. Insufficient study has been conducted to date to determine whether the site supports a resident population of Koalas and thus could be classified as *core* Koala habitat under the SEPP, however, the densities of the three preferred tree species is unlikely to trigger further consideration under the SEPP. Despite this, the applicant has recognised that the site provides habitat value for Koalas and has agreed to produce and comply with a Koala Plan of Management for the site which addresses the major threats to Koalas. This aspect has been conditioned.

SEPP No. 55 - Remediation of Land

Contamination reports have been undertaken and the matters in the SEPP have been satisfied. The site is not contaminated.

SEPP (Rural Lands) 2008

The first stage subdivision involves creation of large lots either zoned rural or partially zoned rural. The proposal is not contrary to the provisions of the SEPP.

Far North Coast Regional Strategy

The land zoned village is nominated in the strategy as a Town and Village Growth Boundary.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

Draft LEP number 21 for vegetation applies however the development site is not affected by the zoning proposals in the draft plan.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Whilst there is no proposal for construction of residential or tourist development at this stage a condition has been imposed required preparation of a design code for the uses within the Village. If the design code differs from Council's DCP then justification is required for the differences and no guarantee is provided that variations will be acceptable. The design guidelines are required by conditions.

A2-Site Access and Parking Code

A carpark is proposed as part of stage 1. The carpark will not be owned or maintained by Council but will be privately owned and eventually part of Community Association land.

A3-Development of Flood Liable Land

Habitable development is not permitted on flood prone land and further details regarding the bridge are required to be submitted as part of the conditions. See comments under section (b) below regarding flooding.

A5-Subdivision Manual

The application has been assessed against the provisions of the Manual. The proposal includes provisions to satisfy the Manual. Conditions have also been imposed to require compliance with the Manual. Section (b) below provides assessment of key issues and impacts.

A11-Public Notification of Development Proposals

The application was publicly advertised.

A13-Socio-Economic Impact Assessment

See above regarding socio economic impact

(a) (iv) Any Matters Prescribed by the Regulations

No relevant prescribed matters.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Geotechnical / Earthworks

Geotechnical Information

The applicants have provided a Geotechnical Report for the development prepared by Australian Soil and Concrete Testing Pty Ltd.

The report has categorised the development site into three separate building areas. The area's being described as;

Area 1 => Located in the south-western portion of the site and on top of a south facing ridge. The building sites are cleared and grassed with the embankment slope along the ridgeline being 35%. The report advises that the ridge is stable and that building sites are a satisfactory distance from the embankment slope.

Area 2 => Located in the south-eastern portion of the site. It is grassed with scattered trees and has a south east facing slope of 20 to 25%. The report advises that there were no signs of slope instability.

Area 3 => This area is located in the northern sector of the development site. The area is grassed with scattered trees. The building envelopes are located on the ridgeline with slopes either side of the ridge ranging up to 20%.

The report has classified the areas as follows;

Area 1 – Class M : Moderate Reactive
Area 2 – Class H : Highly Reactive
Area 3 – Class S : Slight Reactive

The geotechnical report concludes by advising;

"There were no signs of slip or settlement at the three sites investigated and the proposed areas have been assessed as stable and will not be affected by landslip or subsidence when the proposed village is constructed."

The results presented in the geotechnical report are consistent with site observations noted during a recent site inspection and it is considered that Council can rely on the findings within the body of the report.

In this regard the proposed building areas will be suitable for the construction of residential dwellings.

Landforming

The proposed earthworks across the site must comply with the Subdivision Manual A5, section A5.4.6 – Land forming. Table A5-3 Site regrading acceptance criteria and figure 4.2.2 are of particular relevance.

The applicants have estimated the following preliminary road construction earthworks quantities;

Total fill – 45,000m^3 Total cut – 68,000m^3 Spoil on site – 20,000m^3

Given the size of the proposed development these earthworks are considered to be within an acceptable range.

A review of the proposed earthworks, road long sections and advice from the applicants, indicates that areas of the site requiring cuts or fill of greater than 5m will be less than 10% of the site and that earthworks will be less than 10,000m^3 per ha.

Slope analysis

A revised slope analysis plan (sketch 103) and a revised cut and fill plan (sketch 104) has been provided. The slope analysis plan identifies allotment areas where the natural ground slope exceeds 20%. In these areas the applicant has recommended that only pole type homes or similar construction should be allowed. This recommendation is endorsed and should be embodied as a restriction to user in a Section 88b Instrument. A condition has been recommended.

They have also identified specific allotments were it will be difficult to achieve direct vehicle access to the allotments. To provide access to these allotments the applicant proposes to locate the driveway entrance point on the high side of the allotment and then traverse the driveway across the allotment frontage at a grade of 1 in 4 as per the detail provided on Sketch 101. The allotments with difficult access have been nominated on the cross section details provided in sketches 135, 137, 138, 141, 142, 143, 144, 146, 147, 148, 149, 150, 152 and 153.

This is not a desirable situation for a “Greenfield” subdivision however given the topography of the area there appears to be no other solution without undertaken significant bulk earthworks. The extent of the earthworks necessary would not comply with Council’s land forming policy. It is recommended that a restriction to user be imposed on the nominated allotments enforcing the access solution proposed by Cardno. A condition has been recommended.

A review of the long sections details show that cuts and fills are generally within acceptable tolerances. The only exception being along proposed road 9 were two cuts exceed 5.0m and 3.0m respectively. These cuts occur over relatively short lengths and are considered acceptable.

Roads

Road Network / Horizontal Alignment and Vertical Alignment

Conceptual horizontal and vertical road layout plans have been submitted by the applicants. These concept plan are generally consistent with Council standards and are considered satisfactory. Further discussion of this information is provided below.

Road typical cross sections

The applicant has provided preliminary drawings identifying typical road cross sections and a written explanation of the proposed road cross sections which are generally in accordance with Council's standards. These being;

- Neighbourhood connector street – 11m wide pavement within an 18m wide road reserve. This will connect from Kyogle Road to the central village connector.

- Central village connector street – 9m wide pavement within a 17m road reserve. Known as the east west connector street through the village centre.

- Access Street – 7.5m wide pavement within a 14.5m wide road reserve to connect from the central village connector street beyond the western boundary of the site.

Comment

Comprehensive preliminary road long sections, cross sections, intersection details, slope analysis information, cut and fill details and allotment access details for both the public road network (stage 1) and the private road system (future stages) have been submitted.

This information has helped to clarify the extent of cut and fill required for the road network, areas that are not suitable for slab on ground construction (pole homes only), details showing how satisfactory access can be achieved to all proposed allotments and preliminary road cross sections.

Sketch 103 prepared by Cardno identifies area's that are steeper than 20% and nominates that these areas are only suitable for pole home construction and not suitable for slab on ground. This proposal is endorsed and a suitable restriction will be imposed which will only allow pole houses or similar construction in these locations.

A review of the cross sections on sketches 130, 131, 132, 133, 134, 135, 136, 139 and 140 shows that cross fall profile over the footway area do not comply with Council's standard drawings. The profile submitted shows a walkway of approximately 3.0m in width with a cross fall of 5%. This is steeper than the 2.5% standard required by Council and is therefore unacceptable. Furthermore, the cross sections show the batters within the road reserve at slopes of 50% (1 in 2).
Batters with slopes steeper than 25% (1 in 4) cannot be safely mowed by a two wheel drive vehicle. Consequently, Council's Design Specifications require batters within public road reserves to comply with a maximum grade of 25%.

This issue can be resolved by an appropriate condition of consent.

Intersections

The applicants have retained the existing proposed intersection with Kyogle Road but have deleted the proposed eastern bridge across the Tweed River because of potential archaeological constraints and also due to the opinion of DWE that there were too many crossings of the Tweed River.

A condition of consent has been drafted addressing this issue.

Footpaths / Cycleway

The applicants advise that they intend to provide a significant network of pedestrian and bicycle pathways throughout the entire site. Furthermore, they advise that the network will provide easy pedestrian connections between all proposed sites, the village centre and all proposed car park facilities.

Traffic Generation

Comments from the Traffic and Transport and Development Engineers

Kyogle Road is classed as a distributor road in accordance with Councils Road Hierarchy and is also an RTA classified road, which means the RTA must give concurrence to any works within the Kyogle Road reserve.

The function of a distributor road is to carry significant volumes of traffic between centres with a priority for efficient through traffic movement.
This means that intersections should be minimised. I agree with the RTA that only one new intersection should be permitted to service the proposed development however consideration may be given to an additional left out only to facilitate public transport.

A roundabout cannot be supported as proposed because of the high-speed environment and the potential for crashes due to its unexpected presence.
Whilst the Traffic Report proposes a speed limit reduction such reduction will not be approved by the RTA unless the reduction complies with the RTA Speed Zoning Policy and this has not been addressed in the Report other than to claim it is essential as the main road passes the proposed Village and Uki has a reduced speed limit .These are not likely to be acceptable reasons

as the village allotments have no direct access to Kyogle Rd and Kyogle Rd does not bisect the village as it does in Uki. . If the applicant wishes to pursue such change then an assessment using the above Policy needs to be submitted.

Based on the above a revised intersection layout should be developed that complies with "Austroads Guide to Traffic Engineering Practice Part 5 Intersections" A revised intersection analysis is also required based on only one new intersection with Kyogle Road.

The proposal is expected to generate 4500 vehicles per day of which 70% will pass through Uki. This represents a four fold increase in traffic through the village of Uki. Unfortunately this impact was not addressed in the Traffic Report, yet it is a crucial issue and may generate the need for traffic calming devices within Uki Village. In addition, the Traffic Report does not address the adequacy of the Kyogle Road Pavement (standard and width) and alignment and its ability to absorb the substantial traffic generated by the development.

To address these problems Council undertook the preparation of a S94 plan in 2007 to fund future upgrading works necessary along Kyogle Road. The TRCP contribution plan will apply to any development consents associated with Nightcap Village.

Parking

The applicants propose to provide car parking as follows;

- 235 public car spaces
- 1 space on site for each residential allotment
- 1 space on site for each residential unit
- 1 space on site for each townhouse
- 50 guest spaces on site for the hotel
- 50 guest spaces on site for the convention centre
- 20 guest spaces on site for the backpacker
-

Stormwater Drainage

Stormwater Quality Management

The applicant has prepared a Stormwater Management Plan to assess and determine the impact that the proposed development will have on the Tweed River.

They have developed a "treatment train" encompassing water sensitive urban design principles to manage runoff quality from the development. The applicants advise;

> *"All stages will include rainwater tanks for roof areas, buffer strips to treat lot drainage, infiltration trenches to deal with road runoff and proprietary gross pollutant traps to remove litter and debris. All runoff from events of up to the three-month return period will finally filter through bioretention basins before release to the watercourse."*

The applicant advises that MUSIC 3.01 has been used to model the treatment systems and the results demonstrates that the development can proceed without producing an increase in the total annual export of pollutants from the site.

In general, it is agreed that the modelling results show that the treatment train will achieve Council's water quality objectives in accordance with the Development Design Specifications D7.

Construction Phase
Standard sedimentation and erosion control devices will be used during the construction phase of the development.

Operational Phase
The Stormwater Management Practices proposed for this development are:

- GPT's on roadways and to intercept flows to bioretention basins
- Vegetated swales to collect runoff from roads
- Rain water tanks for collection and reuse
- Buffer strips to intercept impervious areas on residential lots
- Infiltration systems for the Village Green and Oval
- Bioretention basins for all stages
- Existing water bodies in stage 1

Flooding Issues

The Tweed River traverses the southern portion of the development site. The floodplain in this area is narrow and steep sided. The applicant has provided a flood study and modelling results (using HEC-RAS) to predict peak ARI 100 year flood levels for the Tweed River across the site.

The flood study shows that generally the residential areas of the village will be located on land elevated well above the ARI 100 year flood level for the Tweed River. The exception is the "Village Housing" zone in the south western corner of the site, where filling of the floodplain is proposed to facilitate residential development above the ARI 100 year flood level.

The floodplain mapping shows flood water from the main river channel extending back into minor tributaries within the site, some of which will affect the proposed development. This issue is discussed in more detail in the following stormwater section.

During a Tweed River flood, the development will be isolated from Kyogle Road. This is not considered a significant issue as the village maintains its internal connectivity and the community will still be able to access services on high ground. Kyogle Road is flood susceptible, and road access to Murwillumbah would not be possible in a large flood, even if egress from the development site were possible.

The applicant proposes two "Tourist and Special Uses" zones in the south western corner of the site, which would be isolated from the village by the river

during large floods. According to the flood study, these areas would also be inundated during an ARI 100 year flood event. As such, these zones would not be suitable for any habitable purpose, and any commercial/industrial use would need to demonstrate compatibility with the flood risk, without impacting on other development.

The applicant was requested to amend the filling plan and remodel the proposed development, to minimise the potential impacts on flood levels and velocities. The applicant has deleted the eastern bridge crossing of the river, raised the level of the western bridge crossing (to match the level of Kyogle Road for local emergency access), and removed fill in the carpark (this area is now in cut). Limited filling of the village housing lots at the western extent of the site is still proposed.

Based on the amended modelling, the maximum flood level increase for the development is 10mm, due to the village housing fill. This is considered to be insignificant, and will not adversely impact on adjoining land or local flood behaviour.

Of greater concern for the overall validity of the flood modelling is the proposed 1110mm decrease in flood levels immediately upstream of the proposed bridge. The flood study fails to properly discuss the reason for such a significant reduction in flood level. Removal of the low level bridge, removal of fill in the floodplain, and local changes in flood velocities may be able to explain some of the change. It is also noted that the modelled cross section at the bridge, as shown in the flood study, does not correspond with engineering road long sections and fill plans provided elsewhere in the SEE, which indicate the construction of filled abutments in the floodplain. Such abutments have the potential to change the flood flow capacity of the river, therefore affecting flood levels and velocities at the bridge.

Overall the findings of the Flood Study are acceptable at this stage of the development. A more detailed bridge design shall be a requirement of the construction certificate application for the subdivision, to ensure the bridge abutments are designed to minimise adverse impacts on flood behaviour.

The applicants have advised that the proposed eastern bridge providing a second access point across the Tweed River is now deleted. The remaining proposed bridge (from Kyogle Road) which is located in the same position as the existing bridge is to be raised so that the deck level is no less than the pavement level of Kyogle Road immediately adjacent. The deletion of second bridge and the raising of the deck to the same level as Kyogle Road should ensure that the available water way for the Tweed River is not compromised and therefore impacts to surrounding flood levels should be minimal. A flood study modelling the impacts of the revised bridge proposal has been conditioned prior to the issue of the Construction Certificate for the works.

No geotechnical information was provided with the RFI. This information will be requested in a condition of consent prior to the issue of the Construction Certificate.

Stormwater Management

The undulating topography of the development site means that several natural watercourses traverse the site, servicing internal and external stormwater catchments. These watercourses ultimately discharge to the Tweed River.

The conceptual stormwater drainage system for the development utilises the main watercourse through the centre of the site to convey the majority of the urbanised catchment eastward to the Tweed River. Dams along this watercourse will be utilised as detention devices to mitigate post-development increases in stormwater, and bio-retention/wetlands would be constructed to treat runoff from each stormwater catchment prior to discharge to the river. In the urban areas, rainwater tanks would capture roof water, and swales, filter strips and GPTs would convey and treat road and allotment runoff prior to discharge to the wetlands.

A summary of stormwater detention calculations has been provided. They appear to only consider the ARI 100 year storm event, and the time of concentration storm duration. At detailed design stage the applicant will be required to provide calculations covering a range of storm durations and intensities to ensure no significant impact on runoff volumes to the river. This may lead to reconfiguration of some of these storages.

MUSIC modelling results have been provided to demonstrate the efficacy of the proposed water sensitive urban design drainage system and treatment train. Final sizing, type and location of these measures are subject to detailed design. Using Council parameters, modelling results show that the treatment train is capable of meeting Council's water quality objectives for suspended solids and phosphorus removal. Nitrogen loading is higher than the objective, but the modelling demonstrates that a significant reduction in pre-development nitrogen loads will be achieved. This is generally acceptable, in order for the applicant to proceed with detailed design. If further modelling does not achieve Council's objectives, some measures, such as the constructed wetlands, will need to be reconfigured to meet Council's deemed to comply standards.

The concept plan indicates drainage corridors / watercourses through the urban areas to cater for the external catchments, with final layout to be determined during subdivision design. Where these watercourses are also affected by the ARI 100 year flood in the Tweed River, as occurs in the eastern portion of the "Village Lots" zone, sufficient buffering must be allowed so that residential allotments remain above both the 1 in 100 year flood and storm levels.

Road crossings of stormwater and flood flow paths must be designed in later stages of the proposal to have minimal impact on upstream levels, while still providing connectivity throughout the subdivision during large events.

Services/Utilities

Water

A self sustaining water supply is an essential component of the application and the recommendation for conditional approval. The development will not at any stage have access to Council's water supply.

The key elements of the water supply are-

- 150 litres/person/day potable use
- 75 litres/person/day non potable
- Sources from on site household tanks and supplemented by dams and groundwater.
- 60 ML dam is proposed to be constructed
- Tanks are to be supplemented by a trickle feed from the dams
- Recycled water for fire fighting and non potable use (toilets and irrigation) is to be stored in a 500KL tank.

The concept plan areas for irrigation, storage of treated water and sewage treatment plant and rising main, wet weather storage tanks, high level storage tanks, water pipelines and woodlot water storage area. These areas are shown on land adjacent to the village area land. Water is proposed to be supplied via water tanks and supplemented by dams and ground water extraction. Water supply requirements for the proposed village are indicated as:

Total Water per equivalent person	225 L/day
Potable Water per equiv. person	150 L/day

The balance for toilet flushing and outdoor use is proposed to be provided using treated recycled water. The population for water supply purposes is indicated as 1200 ep. Due to the remoteness of the site, the proposed development is not serviced by Council's Water Supply and water cannot (and will not) be made available from this supply. Therefore the water supply to the proposed development must be self-sustaining in perpetuity.

The proposal by the applicants to provide a potable water supply by treating water stored on site in dams and the supplementary supply of domestic water from roof water tanks is achievable providing technical and long term management issues are resolved. Information submitted now includes the establishment of a surface water supply consisting of a minimum 3 ha catchment and 50ML dam to supplement water supply demand requirements. It is submitted that this supplementary supply will require the installation of a water treatment facility to settle (and coagulate) and filter stored surface water and be an on-demand trickle feed to households where a disinfection process will take place prior to use.

The water supply system design incorporates the applicant's calculations for an adequate supply of potable water having been based on 110L/person/day of water not 150L (it was previously agreed that the base water demand is 225L/person/day and would be made up of 150L from tank supply and 75L from recycled water for toilet flushing and external use) as previously agreed to. The applicant has stated that the reduction is based primarily on the information contained with AS1547.

AS/NZS 1547:2000 is an Australian Standard for the design of domestic on-site sewage management systems. The submitted demand calculations previously submitted and inferred to within this submission utilise typical WASTEWATER FLOW designs in Appendix 4.2D of the Standard. This is the wastewater discharge rate not the water supply demand rate as there is a portion of the water supply that would be removed from the water cycle due to consumption, cooking processes, evaporation, cleaning etc. The Standard is a generic instrument and as such should be considered in conjunction with local behaviour and environs.

Discussions with Council's Water Unit have concluded that a 150L/person/day of potable water is a minimum requirement. This estimation has been based on the existing small villages of Tyalgum and Uki where water supply demand rates are approximately 225L/p/d. There rates are below typical water demands for the urban areas of the Tweed being above 320L/p/d. These small rural village populations are less than 1000 persons each. In addition further consideration has been given to water demand rates experienced during a period where the wider Tweed community were on Level 5 water restrictions. During this period, in an environment of extensive advertising, water conservation education & incentives and implementation of penalty provisions, the demands had only fallen to around 225/p/day.

The demand of 150L/p/d was based upon historic consumption in Tweed Shire villages and is about 50L/p/d less than historic demands recorded throughout the whole water supply system.

The adoption of 110L/p/d is based upon the figures given in AS1547 On-site domestic waste water management. This document is for the case of on-site sewerage management where the individual property owner is responsible for the operation of their own system, generally on rural and rural residential properties. It provides guidance for both on-site roof water tank supplies and reticulated community or bore water supplies. As this development is of an urban nature rather than rural residential, it is considered that individual residents would be much less "water aware" than other users of on-site sewage treatment facilities.

It is therefore considered that 110L/p/d is not an acceptable potable water supply rate and that a minimum of 150L/p/d is required. This has been agreed to by the applicant and is an essential component of the recommendation for conditional approval.

The development also now proposes a surface water collection dam and water treatment plant to provide additional potable water as the most recent modelling has shown only a "70% – 80% efficiency" of supply using tanks alone.

It proposes that a "trickle feed reticulation system" will be provided to top up tanks during periods of extended dry weather.

Roof areas and Tank Sizing

A condition has been recommended nominating minimum tank capacity and minimum roof area for each different use within the Village.

Recycled Water

Conditions have been recommended specifying standards to be met for recycled water.

Supply of Water for Fire Fighting Purposes

The recommendation includes a condition to ensure an appropriate and adequate water supply infrastructure shall be provided for fire-fighting purposes.

Sewer

A self-sustaining sewerage/recycled water system is an essential component of the application and the recommendation for conditional approval.

The key elements of the sewerage system are-

- Maximum ultimate population density of 1,000 persons including employees and persons occupying tourist accommodation
- 1100 equivalent person capacity sewerage treatment plant
- Seven days breakdown capacity
- 20 ML treated effluent dam for wet weather storage fed to irrigation areas (20ha) and open space
- 500 KL recycled water tank fed to households for toilets, gardens and fire fighting.

Wastewater is proposed to be recycled to households for external and toilet use and for use on public open space and disposed of via land irrigation. The proposed development is not serviced by Council's Sewerage Systems and it is too remote to be able to be connected to it. Sewage loading anticipated for the proposed village is 180L/d per per equivalent person.

- The population for sewerage purposes is indicated as 1100 ep.

- Effluent disposal is proposed by a reuse scheme that supplies recycled water for:

    (a) Toilet flushing and outdoor home uses.
    (b) Irrigation of public open space and market garden.
    (c) Irrigation on approximately 20 ha of rural areas.

The applicants propose the construction and operation of a packaged sewage treatment plant that includes biological nutrient removal, ultrafiltration and disinfection in the treatment train to produce recycled water of Grade A+ standard.

As with water reticulation, the provision of a private sewage treatment plant is achievable providing technical and long term management issues are resolved. Conditions have been imposed regarding these issues.

If the whole sewerage system and effluent disposal system is designed such that no overflow from the system whatsoever is possible, no licence under the Protection of the Environment Operations (POEO) Act is required. Having no licence will however mean that any overflow that did occur would be an illegal discharge and may have serious legal and financial ramifications for the Community Association. Designing the total system so that there is no discharge ever, is probably not a practical proposition. Council does require the system to be designed so that there will be a very low risk discharge of raw sewerage, treated or partially treated effluent to the Tweed River either from the entire sewerage system including the collection system, pump stations, pumping mains, treatment plant, storage facilities, irrigation and disposal systems.

There is no mention of licensing the various systems under the Water Industry Competition (WIC) Act. The applicant needs to confirm the need for WIC Act Licences with the Independent Pricing and Regulatory Tribunal (IPART). If no licence under that Act is obtained, Council requires that the design, operation and management of the sewage collection, conveyance, treatment, effluent storage and disposal systems provide certainty that there will be no uncontrolled discharges to the Tweed River, which is part of the catchment of the Tweed Shire's Water Supply.

Electricity

Country Energy have advised that the 11kV network in the vicinity of the above proposed development has capacity to supply the development. Appropriate conditions will address this issue.

Telecommunication

The applicants have notified Telstra of their intent to develop the subject property. No other details have been submitted. A condition of consent will address this issue.

The applicants have indicated they wish to install broadband communications. The application indicates the Village will contain *a range of quality live/work and business premises - especially suited to those engaged in creative, information and design based activities. Those producing high value products for regional, national and global markets.*

In this regard a condition has been imposed requiring the installation of optic fibre conduits.

Flora and Fauna

The site is located in a scenic and relatively remote area of the shire, surrounded by high conservation value areas and National Parks (some kilometres away). The site itself has conservation significance in parts and

ecological values of the site have been well-described. Potential ecological impacts have been generally considered and responded to with statements advocating either avoidance of impact, mitigation, amelioration or compensation, however, these need to be conditioned to ensure the intended outcomes are achieved.

Particular issues in relation to the site are:

- The presence of threatened flora species – responded to with a proposed management plan and conservation zones. To be conditioned.
- The presence of threatened fauna species – in particular the Koala – responded to with a proposed Management Plan. To be conditioned.
- The location of the site on the upper headwaters of the Tweed River – above Council's water supply intake and ecologically and hydrogeologically sensitive – thus sensitive to any changes in water quality , velocity and quantity (use and disposal). The immediate riparian area has been considered through a proposed riparian revegetation strategy (to be conditioned), receiving waters water quality parameters (to be conditioned) and hydro-geological impacts (considered by Department of Water and Energy as General Terms of Approval).

Following the Section 34 conference held on site on December 18 2008, the applicant has agreed to prohibit cats and dogs within the development area. A condition is recommended in this regard. They have further amended the Concept Plan to remove any directions to Mebbin National Park through unformed roads. These issues are now satisfactorily addressed.

Prohibition of cats and dogs

A condition prohibiting cats and dogs is recommended including S.88B restrictions and Community Management Statement by-laws.

Riparian buffer and restoration:

The applicant has agreed to extend the riparian buffer to a width of 50m to be rehabilitated either side of river, measured from the top of Tweed River high bank. This amended area has been shown on the Concept Plan and is acceptable. A Conservation Plan is proposed for the riparian buffer and all other areas identified as Environmental Open Space.

Water quality

The applicant agreed to undertake water quality monitoring within Tweed River during construction operations. A draft condition has been provided to this effect.

The applicant has agreed to accept a condition to the effect that existing dams on the site be "off-line" from any stormwater treatment train.

Additional information required

An aquatic habitat/in-stream biota survey is required prior to commencement of works. If Platypus (or other significant fauna) are located, a management

plan is required to avoid or mitigate impacts. A draft condition has been provided in this regard.

Bushfire - Asset Protection zones

Bushfire APZ's should be wholly within privately managed land with maintenance being the responsibility of applicant. In this case the responsibility would rest with the community association. A draft condition is provided.

Threatened Species Management Plan

A condition has been imposed requiring amendments to the plan regarding koalas.

Agricultural Buffers

The Village is surrounded by Rural 1(a) zoned land. Buffers are proposed between the Village and the rural land. The majority of the surrounding land is currently owned by the proponent however in the north eastern corner of the Village the site adjoins land owned by others. The proposal includes large lots in this area to have the house sites located away from the adjoining rural land.

Asset Protection Zones

The proposal includes bushfire asset protection zones which will be managed by the community association. Proposed conditions of consent require the provisions of APZ's and their ongoing management.

Visual

The development will result in significant change to the current outlook across the site. The site will be transformed from a rural setting to an urbanized developed site with infrastructure such as roads and carparks, residential and non residential buildings. These are all facets of a village and are consistent with the zoning of the land.

Various components of the proposal will be visible from surrounding locations. This will be mitigated by the topography of the site and vegetation. Complete screening of the development is not possible given access roads into the property and the undulating terrain that is characteristic of the locality.

The Tweed Shire Scenic Landscape 1995 evaluation prepared by Catherine Brouwer to inform the Tweed LEP 2000 rated the Nightcap Range district has having a high scenic quality with very high being the highest. The report provides for scenic management with opportunities listed as residential, nature and rural based recreation and tourism and small industries based on rural and forest assets. The parameters of development are set down as maintaining the natural creek corridor experience through limits on development extent and visibility. It is considered these objectives will be achieved by the 50 metre buffer along the River and existing and proposed vegetation screening.

(c) Suitability of the site for the development

The site contains characteristics such as slope, bushfire prone land, lack of infrastructure such as water and sewer, isolation, proximity to the Tweed River, rural/urban interface and aboriginal heritage which constrain development. The proposal includes measures to manage and mitigate the issues such as buffers, asset protection zones, provision of infrastructure, pole house construction and community title management and funding.

The site is far from being ideal given its relative isolation however an opportunity exits for a community to be developed over time that contains elements of self sustainability.

(d) Any submissions made in accordance with the Act or Regulations

Integrated Referrals

The application is classified as integrated development as approvals are required from the NSW Rural Fire Service and the Department of Water and Energy. The agencies have provided their terms and conditions.

Kyogle Shire Council made a submission raising no concerns.

Public submissions

The application was exhibited for public comment twice on 4 October to 1 November 2006 and from 24 October to 21 November 2007. 364 and 77 Public submissions respectively were received during the exhibition period. The vast majority of the submissions were objections to the proposal.

The key themes of the submissions can be summarised as follows:

- overdevelopment of the site in this location
- water and sewer issues
- increased traffic
- environmental harm and
- unsustainability.

A list of the matters raised in the submissions have been summarised below.

Many of the submissions are very critical of the proposal and feel that the proposal is inappropriate and will have a deleterious impact on the environment. These issues have been considered in depth by Council officers and assessment of the proposal since lodgement in 2006, reflecting many of these concerns has resulted in a number of amendments to the application, additional information provided and a suite of conditions formulated to regulate, protect manage and control the development. These conditions will apply to the development as a concept and also to Stage 1 of the development. However, further development applications will be required for future stages and will provide further opportunity to deal with issues which arise in those applications.

The issues raised are all valid concerns and comment regarding them has been provided throughout this report. Whilst the issues are relevant it is considered that the proposal balances the impacts with a genuine attempt to develop a sustainable Village.

It is submitted in the objections that the zoning is inappropriate for such an isolated site however opportunities to rezone the land were not taken as part of the comprehensive Shire wide local environmental plan process in 1987 and 2000.

It is considered that a development that manages its own infrastructure including water and sewerage and has facilities for residents that aren't required to be provided and funded publicly and proposes some employment opportunities is a better option than forty hectares of rural residential development that relies on site septic tanks with no community facilities.

The community that establishes as a result of the development is likely to be different to the community of existing rural villages and hinterland areas however the concept village will provide an identity for the occupants and a sense of place with a small central village hub, sports oval, community uses and a market area.

The matters raised in submissions are listed below. It should be noted that the majority of the issues were raised multiple times.

- Environmental & economic sustainability;
- Loss of native flora & fauna particularly Koalas, water supply
- Increased traffic
- Impact on the environment
- Preservation of the rural aspect of the area
- Bulk and scale
- Inadequate time to respond
- Amenity
- Population increase
- Impact on infrastructure
- No Environmental Impact Study
- Noise pollution
- Impact on infrastructure
- Stormwater pollution and run-off
- Sustainability
- Loss of regional character
- Density
- Loss of koala habitat
- Domestic animals
- Pollution
- Higher incidents of road accidents
- Impact on infrastructure particularly water and waste
- Loss of village atmosphere
- Increase in domestic animals that will kill natural habitat
- Inadequate representation of ratepayers by Council
- Location

- Density in a rural area
- Loss of village lifestyle
- Water sustainability
- Density
- Social Impact
- Loss of tourism
- Increase in feral animal populations
- Loss of rural heritage
- Increase cost to ratepayers for road upgrades
- Natural heritage
- Employment unsustainability
- Global warming
- Land clearing
- The Environment
- Visual amenity
- Cost to ratepayers of increased infrastructure
- Light pollution
- Overdevelopment
- Inadequate Council representation of the public
- Sustainability
- Aboriginal rights
- heritage
- loss of cultural heritage
- Air pollution
- Crime
- Ecological impact
- Spiritual impact
- Farming
- Geopathic stress
- Traffic/cost to ratepayers safety of increased traffic on Kyogle Road.
- Three storey unit developments in rural setting inappropriate.
- Loss of rural heritage
- Rubbish disposal
- Four hundred percent increase in population.
- Four and half thousand extra vehicle movements per
- Inappropriate concept in the setting.
- Inaccurate population assumptions, inaccurate calculations
- Economic impact on other towns.
- Community consultation

(e) Public interest

The key public interest issue relates to the development not relying on Council key infrastructure such as water and sewer services to exist. The proponents and ultimate owners are required to build, maintain, replace, and fund the infrastructure. The competing public interest issue arises with the requirement that the development does not burden the Tweed community by relying on public infrastructure and the responsibilities of Council being satisfied that items such as water and sewer are in place for public health and environmental protection purposes.

The applicants have demonstrated that water and sewer can be engineered to serve the site subject to the strict parameters identified in this assessment report and the proposed conditions of consent. Prospective owners of the Village will be made aware of their required long term ongoing financial commitment to funding the infrastructure.

OPTIONS:

1. Resolve to indicate an intention to approve the development in accordance with the recommendation.

2. Refuse the application for specified reasons.

It should be noted that a Class 1 appeal is currently on foot. The applicants may proceed with the Appeal if they are dissatisfied with the determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant proceeds with the Appeal Council will incur further legal costs and consultants will need to be engaged to defend the Appeal if the application is refused.

POLICY IMPLICATIONS:

There are no policy implications arising out of the proposal.

CONCLUSION:

The application has been assessed against relevant legislation and on balance the application is recommended to be supported and the DECC notified in accordance with the Tweed LEP 2000.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any **"non confidential"** attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

Agenda Report

TWEED SHIRE COUNCIL
MEETING TASK SHEET

User Instructions
If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item - EXTRAORDINARY PLANNING MEETING Tuesday, 5 May 2009

Action for Item **P1** as per the Committee Decision outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD TUESDAY 5 MAY 2009:

97

Cr P Youngblutt
Cr D Holdom

RESOLVED that the recommendations of the Extraordinary Planning Committee held Tuesday 5 May 2009 be adopted.

FOR VOTE - Unanimous

TITLE: **[PR-PC] Development Application DA06/1054 for a Staged Development Application under Section 83(B) of the EP&A Act 1979 for a Concept Plan Approval for a Village and Ancillary Development and Stage 1 Works Involving Construction of Access Road to the Village from Kyogle Road, Construction of Car Parking Area for 69 Cars and 3 Bus Bays, Road Bridge and a 6 Lot Subdivision at Lot 3 DP 771335; Lot 4 DP 737440; Lot 121 DP 134446, No. 2924 Kyogle Road, Kunghur and Crown Roads**

The following persons addressed the meeting of the Planning Committee on this matter.

Ms Diane Wilder
Mr John Donvito
Mr Peter Smith
Mr Phil Carr, representing Uki Residents Association
Mr Eddie Roberts, Tweed Climate Action Now
Mrs Jenny Pearson
Mr Peter Bennett
Mr Jim Warburton
Mrs Lisa Townsend

P 61

Cr K Milne
Cr B Longland

PROPOSED that Development Application DA06/1054 for a Staged Development Application under Section 83(B) of the EP&A Act 1979 for a Concept Plan Approval for a Village and Ancillary Development and Stage 1 Works Involving Construction of Access Road to the Village from Kyogle Road, Construction of Car Parking Area for 69 Cars and 3 Bus Bays, Road Bridge and a 6 Lot Subdivision at Lot 3 DP 771335; Lot 4 DP 737440; Lot 121 DP 134446, No. 2924 Kyogle Road, Kunghur and Crown Roads be REFUSED for the following reasons:-

1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the aims within Clause 4 of the Local Environment Plan 2000, as the proposed development:
   - due to the scale and size will not retain the unique natural and developed character of the Shire, and
   - the impact will not ensure that its economic vitality, ecological integrity, and cultural fabric is enhanced

2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 2(d) zone objectives within Clause 11 of the Local Environment Plan 2000, as the proposed development:
   - does not provide for a rural village of a design and scale that makes a positive contribution to the character of the isolated locality.

3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with Clause 15 of the Local Environment Plan 2000, as the proposed development:
   - does not provide for long term security for the adequate provision of essential sewerage services.

4. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration to Clause 16 of the Local Environment Plan 2000, as the height and scale of the proposed development:
   - is not appropriate to its location, surrounding development and the environmental characteristics of the land.

5. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration to Clause 17 of the Local Environment Plan 2000, as the proposed development:
   - does not give proper consideration to significant social and economic impacts due to impacts on surrounding localities, on travel distances required or on availability of health and emergency services.

6. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration to Clause 22 of the Local Environment Plan 2000, as the proposed development:

   - is likely to constitute a traffic hazard and materially reduce the capacity and efficiency of the designated road due to the increase in traffic volumes.

7. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration to Clause 31 of the Local Environment Plan 2000, as the proposed development:
   - will impact on the scenic quality, aquatic ecosystems, biodiversity and wildlife habitat and corridors of the adjoining waterbody of the Tweed River due to its size, scale and location.

The Motion was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 62

Cr W Polglase
Cr P Youngblutt

RECOMMENDED that Standing Orders be suspended to allow Council to resolve into Workshop mode to allow free discussion on this matter.

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr D Holdom, Cr B Longland, Cr K Milne, Cr W Polglase, Cr K Skinner
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 63

Cr W Polglase
Cr D Holdom

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to include:-

General Conditions for Concept Approval and Future Stages after Stage 1

5.1. The developer must lodge a bond in the form of an unconditional Bank Guarantee, not limited by time, in favour of Tweed Shire Council prior to issue of the first subdivision certificate or occupation certificate after stage 1 which ever occurs first. The bond is to be for the amount of $200,000. The bond will be held by Council until such time as 100 equivalent tenements are connected to the plant and the Council is satisfied that the treatment plant is being operated and maintained in a manner that ensures satisfactory treatment of Sewage. If the proponent or community association fails to comply with any consent conditions or other agency licence or approval which relate to the Sewerage system then Council at its discretion alone can use the bond to undertake such works and operations to operate, maintain and refurbish the Sewerage System.

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr B Longland, Cr W Polglase
AGAINST VOTE - Cr K Milne
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 64

Cr D Holdom
Cr K Skinner

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to include the following after Condition 9 and within Conditions 10, 50 and 93(k) (depicted in **bold type)**:-

(at conclusion of Condition 9)
No dog ,cat, **rabbit, ferret or hard hoofed animal** is permitted on the site

10. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any dog, cat, **rabbit, ferret or hard hoofed animal** (excluding any assistance animal permitted under the *Companion Animals Act, 1998 (NSW) and the Disability Discrimination Act, 1992 (Cth)*). The consent for the community title subdivision must make provision for a restrictive covenant acceptable to Council pursuant to section 88B of the Conveyancing Act and the CMS is to provide for an appropriate by-law to address this requirement.

50. The Community Management Statement must require the Community Association to be responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats, dogs, **rabbits, ferrets and**

hard hoofed animals at any and all entrances to the development at all times.

93. As a minimum the following easements for services, rights of carriageway and restrictions as to user under Section 88B of the Conveyancing Act are to be created to Council's satisfaction:

(**k) Restriction as to user regarding no dogs, cats, rabbits, ferrets or hard hoofed animals. Burden: Community Land. Benefit: TSC**

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 65

Cr K Milne
Cr B Longland

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to include:-

Aboriginal Cultural Heritage and Assessment Plan

75 (1) The Developer must amend the Aboriginal Cultural Heritage Management Plan, before any physical earthworks commence. This **amendment** to include:

(a) undertaking further consultation with the Aboriginal Community to provide all knowledge holders an opportunity to comment prior to the commencement of Stage 1 works, and

(b) an appropriately funded inspection by the Aboriginal Community and an archaeologist after each stage of earthworks, including initial ground clearance.

The Motion was **Carried**

FOR VOTE - Cr D Holdom, Cr B Longland, Cr K Milne, Cr W Polglase
AGAINST VOTE - Cr P Youngblutt, Cr K Skinner
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 66

Cr B Longland
Cr K Milne

PROPOSED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to vary the population density from 1000 to 500 within Clauses 32 and 93(j):-

Population Density Restrictions

32. The density of development must be restricted at each and any stage by reference to the capacity of the proposed sewerage treatment plant (STP) and in any event the population density of the development is not to exceed 500 Persons at any time. Such population density includes all employees and any persons occupying any form of tourist accommodation.

93. As a minimum the following easements for services, rights of carriageway and restrictions as to user under Section 88B of the Conveyancing Act are to be created to Council's satisfaction:

    (j) Restriction as to user regarding density of village use and a restriction to a maximum of 500 persons being present at any time Burden: Community Land. Benefit: TSC.

    (k) Restriction as to user regarding no dogs or cats. Burden: Community Land. Benefit: TSC

    (l) Easements for access to construct, operate and maintain Sewer Treatment Plant and Water Treatment Plant etc. including the erection and maintenance of all plant and equipment forming part of the Infrastructure Burden: Proposed Lot 12. Benefit: Community Land and TSC.

    (m) Easement for access and covenant to maintain asset protection zone. Burden: Proposed Lot 12. Benefit: Community Land and TSC.

    (n) Restriction as to user regarding environmental open space buffer - minimum of 50 metre buffer to be maintained between development and each high bank of the Tweed River. Burden: Community Land. Benefit: TSC

    (o) Easement for pipes to and from the Sewerage Treatment Plant and Water Supply Systems to the village Burden: Proposed Lot 12, Infrastructure Land and Community Land. Benefit: Community Land.

    (p) Easement for electricity to and from the Sewerage Treatment Plant and Water Supply Systems to the Community Land. Burden: Proposed Lot 12, Infrastructure Land and Community Land. Benefit: Community Land.

    (q) Easement for emergency egress from the development site. Burden: Proposed Lot 12 and Infrastructure Land. Benefit: Community Land

    (r) Right of carriageway - specifically the right to use and maintain all existing and future access roads. Burden: Proposed Lot 12. Benefit: Community Land.

    (s) Easement for storage of treated water - allowing the storage tank to remain on the land. Burden: Proposed Lot 12. Benefit: Community Land and TSC.

(t) Easement for pipes to the effluent irrigation areas - being the pipe network running from the compound to the 4 holding and irrigation areas. Burden: Proposed Lot 12. Benefit: Community Land and TSC.

(u) Right of access to and use make up water from dams - short term right for operational needs for so long as required for purposes of topping up treated water system so that it is operational. Burden: Proposed Lot 12. Benefit: Community Land.

(v) Right for fencing - in and around the water courses and Sewerage Treatment Plant and Water Treatment Plant compound and irrigation areas. Burden: Proposed Lot 12. Benefit: Community Land.

(w) Restriction as to user – establishing buffer zones around all effluent irrigation areas and irrigation infrastructure so that they are separated from neighbours, residential areas and sensitive environments. Burden: Proposed Lot 12 Benefit: TSC.

(x) Restriction as to user around Protected Archaeological Areas as identified on the Village Plan and Aboriginal Heritage Display and an obligation to fence and protect the protected Archaeological Areas and exhibits Burden: Community Land Benefit: TSCFOR VOTE - Voting - Unanimous

The Motion was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 67

Cr D Holdom
Cr P Youngblutt

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended at Clause 73 and to to allow new condition 73.1 (depicted in **bold type**):-

Aboriginal Heritage Display

73. The location and the nature of the Aboriginal Heritage Display must be developed in consultation with the relevant Aboriginal stakeholders. **In this regard consultation with relevant Aboriginal stakeholders must be undertaken regarding the history of the whole site as it relates to Aboriginal culture and heritage. Cultural and heritage issues are to be included in the Aboriginal Heritage Display where considered appropriate by the aboriginal stakeholders.**

73.1 The village green, the sports and market area, the market garden and all streets are to be named from the Aboriginal dialect appropriate to the area with the English translation underneath. These names are to be submitted to the Aboriginal Advisory Committee for approval before being actioned.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 68

Cr D Holdom
Cr K Skinner

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended at Condition 91 (changes depicted in **bold type**):-

Landscaping

91. A detailed landscape plan must be formulated for each Stage and must be submitted with the Development Application for each Stage and approved by Council or delegate prior to issue of consent for that stage. The plan must be prepared by a landscape architect or landscape consultant to a standard acceptable to Council or delegate. The plan must provide use of **100% native species** and prohibit use of species that are known environmental weeds **(including all vines and creepers)** and must include the following documentation:

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr B Longland, Cr W Polglase
AGAINST VOTE - Cr K Milne
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 69

Cr B Longland
Cr K Milne

PROPOSED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to allow an additional Clause (e) to be added to Part A-Concept Approval for Village, Condition 1 as follows:-

(e) In any event the height limit applicable to the village housing precinct is limited to two (2) storeys.

The Motion was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 70

Cr K Milne
Cr B Longland

PROPOSED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended at Conditions 76 and 77 as follows:-

Riparian Buffer Zone within Environmental Open Space

76. A Riparian Buffer Zone (RBZ) generally a minimum of 100 metres between any development and each high bank of the Tweed River must be provided to Council's satisfaction. Minor exceptions to the 100m RBZ requirement may be permitted for the main entry road and bridges into the development. The footprint of all proposed buildings must be outside of this 100 metre buffer. The 100 metre Riparian buffer will comprise a 80 metre core buffer of dense local native vegetation, rehabilitated or replanted as necessary, and ranging from the surveyed top of bank to a line 80 metres from the high bank perpendicular to the river; and a 20 metre outer buffer of planted native vegetation of lesser density which has some limited potential for compatible or existing land uses, such as parkland and other recreational uses. The Community Management Statement is to make appropriate provision for maintenance of the RBZ.

77. Prior to the commencement of any works a highly visible and durable traffic barrier must be erected parallel with the surveyed top of river bank and located at the eastern extent of the dripline of riparian vegetation for the full length of the development site. No machinery must enter beyond the traffic barrier and no stockpiling or storage of materials, plant or equipment must occur within this zone, or in any case within **80** metres of the river top of bank. The traffic barrier is to remain at all times during earthworks and construction activities but may be removed between development stages.

The Motion was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 71

AMENDMENT

Cr K Milne
Cr B Longland

PROPOSED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended at Conditions 76 and 77 as follows:-

Riparian Buffer Zone within Environmental Open Space

76. A Riparian Buffer Zone (RBZ) generally a minimum of 75 metres between any development and each high bank of the Tweed River must be provided to Council's satisfaction. Minor exceptions to the 75m RBZ requirement may be permitted for the main entry road and bridges into the development. The footprint of all proposed buildings must be outside of this 75 metre buffer. The 75 metre Riparian buffer will comprise a 50 metre core buffer of dense local native vegetation, rehabilitated or replanted as necessary, and ranging from the surveyed top of bank to a line 75 metres from the high bank perpendicular to the river; and a 25 metre outer buffer of planted native vegetation of lesser density which has some limited potential for compatible or existing land uses, such as parkland and other recreational uses. The Community Management Statement is to make appropriate provision for maintenance of the RBZ.

77. Prior to the commencement of any works a highly visible and durable traffic barrier must be erected parallel with the surveyed top of river bank and located at the eastern extent of the dripline of riparian vegetation for the full length of the development site. No machinery must enter beyond the traffic barrier and no stockpiling or storage of materials, plant or equipment must occur within this zone, or in any case within **75** metres of the river top of bank. The traffic barrier is to remain at all times during earthworks and construction activities but may be removed between development stages.

The Motion was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 72

Cr D Holdom
Cr P Youngblutt

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended at Condition 91(h) and (j) and Condition 130(h) and (j) as follows:-

Landscaping

91. A detailed landscape plan must be formulated for each Stage and must be submitted with the Development Application for each Stage and approved by Council or delegate prior to issue of consent for that stage. The plan must be prepared by a landscape architect or landscape consultant to a standard acceptable to Council or delegate. The plan must provide **100% native species** and prohibit use of species that are known environmental weeds **(including all vines and creepers)** and must include the following documentation:

    h) Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. Deep root zones must be provided for

large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees must be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained. Where soil is compacted within two (2) metres of the trunk of large trees, site remediation by aeration (no deep ripping permitted) and mulching is to be undertaken to ensure the viability of the tree.

j) A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which must include;
- species listed by botanical and common names, with the majority of plants constituting local native species;
- specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
- maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of five years after completion of landscaping on site.

Environmental Management

130. A detailed landscape plan must be formulated for each Stage and must be submitted with the Development Application for each Stage and approved by Council or delegate prior to issue of consent for that stage. The plan must be prepared by a landscape architect or landscape consultant to a standard acceptable to Council or delegate. The plan must provide **100% native species** and prohibit use of species that are known environmental weeds **(including all vines and creepers)** and must include the following documentation:

h) Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. Deep root zones must be provided for large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees must be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained. Where soil is compacted within two (2) metres of the trunk of large trees, site remediation by aeration (no deep ripping permitted) and mulching is to be undertaken to ensure the viability of the tree.

j) A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which must include;
- species listed by botanical and common names, with the majority of plants constituting local native species;
- specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.

- maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of five years after completion of landscaping on site.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 73

Cr K Milne
Cr B Longland

RECOMMENDED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to include a further clause (e) be added to condition 81:-

Threatened and Significant Protected Species Management Plan

81(e) Measures to assess the possible occurrence of the Giant Barred Frog and their habitat including measures to be undertaken to avoid or mitigate impacts from known threats to the Giant Barred Frog arising from urban development including loss or damage to river banks and burrows and pollution, algal growths and siltation of waterways.

The Motion was **Carried**

FOR VOTE - Cr D Holdom, Cr K Skinner, Cr B Longland, Cr K Milne
AGAINST VOTE - Cr P Youngblutt, Cr W Polglase
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 74

Cr K Milne
Cr B Longland

PROPOSED that the recommended conditions for approval of Development Application DA06/1054 outlined in the report be amended to include a further clause (e) to be added to Condition 100 being:-

100(e) Acknowledgement these conditions of consent will be strictly enforced and penalty infringement notices will be applied.

Where the infringement occurs by an individual resident or guest of the resident the penalties will be applied at 75% to the responsible resident and 25% to the Community Association.

The above motion was ruled out of order on the advice of the General Manager.

P 75

Cr W Polglase
Cr P Youngblutt

RECOMMENDED that Standing Orders be resumed.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr J van Lieshout

P 76

Cr W Polglase
Cr D Holdom

RECOMMENDED that:-

1. Council notifies the Director General of the Department of Environment and Climate Change that it intends to grant consent subject to conditions to DA06/1054 for a staged development application under Section 83(B) of the EP&A Act 1979 for a concept plan approval for a village and ancillary development and stage 1 works involving construction of access road to the village from Kyogle Road, construction of car parking area for 69 cars and 3 bus bays and a 6 lot subdivision at; Lot 3 DP 771335; Lot 4 DP 737440; Lot 121 DP 134446, Kyogle Road Kunghur and Crown Roads.

2. Following the receipt of comments or expiration of 28 days from notification whichever occurs first, DA06/1054 be reported to Council for determination including consideration of the comments received if any, from the Director General of the Department of Environment and Climate Change.

3. The following draft conditions, be received and noted:

DEVELOPMENT CONSENT - DA06/1054

Consent is granted in accordance with Section 83 B of the Environmental Planning and Assessment Act 1979 to staged development application 06/1054 which sets out a:

a) Concept proposal for a Village; and

b) Detailed proposal in Stage 1 for a six lot subdivision, carpark (69 cars and 3 bus bays), road bridge and public road works

on Lot 121 DP134446, Lot 3 DP771335, Lot 4 DP737440 and Crown Roads subject to the attached conditions of consent below. This consent comprises parts A, B, C and D. In this consent, except insofar as the context or subject matter otherwise indicates or requires, the terms used have the meanings indicated in Part D.

PART A – CONCEPT APPROVAL FOR VILLAGE

Concept Proposal

1. The concept proposal is to be undertaken in accordance with the following plans except where varied by the conditions of this consent-

   (a) Concept Plan Diagram 1 dated 16 January 2009 Project No. 3500/53
   (b) Village Plan Diagram 2 dated January 2009
   (c) Staging Plan Diagram 3 dated January 2009
   (d) Watercourses Figure 3 dated 16 January 2009

2. Lot 121 DP 134446 Lot 3 DP 771335 and Lot 4 DP737440 are to be subdivided into 6 lots. Proposed Lots 13, 14 and 15 of the 6 Lot subdivision are to be the subject of a future Community Title subdivision in accordance with the concept proposal. Community Property is to include:

   (a) The Village Green;
   (b) The Sports and Market area;
   (c) The Sports and Market Area Parking;
   (d) The Kyogle Road Car Park;
   (e) The Market Garden;
   (f) The Market Garden Footbridge;
   (g) The Tweed River Footbridge;
   (h) Community Association Infrastructure;
   (i) The Environmental Open Space;
   (j) The Protected Archaeological Areas being NV1 and NV4 and Aboriginal Heritage Display;
   (k) Roads other than the two roads identified on the Concept Plan Diagram 1 which are to be public roads dedicated to TSC.

3. Consent is granted for Stage 1 of the development without the need for further development consent. This consent does not otherwise authorise the carrying out of any development until Stage 1 is completed and consent is subsequently granted following a further development application.

4. This consent does not approve any concept proposal for fill, excavation, earthworks, lot sizes, building height, site cover, floor space ratio or setbacks, except as explicitly set out in this consent. No further part of this development may be approved until Design Guidelines prepared by the Developer have been approved by Council for each Precinct. The Design Guidelines are to address, but not be limited to, lot sizes, building height, site cover, floor space ratio, setbacks and landscaping. The Design Guidelines are to detail and justify any variation to the relevant sections of Council's Development Control Plan (TDCP). The Design Guidelines must restrict height in the Village Lot precincts to two storeys. The Design Guidelines will not extend to engineering design and construction specifications for fill, excavation or public and Community Association Infrastructure. Any such works must be in accordance with TSC Subdivision Manual, section A5 of TDCP. No guarantee implied or otherwise is given that Design Guidelines inconsistent with TDCP will be approved.

General Conditions for Concept Approval and Future Stages after Stage 1

5. Any development application next after the Stage 1 approval must include all major Community Association Infrastructure that cannot be practicably built in stages. This Infrastructure must be constructed and operational prior to the release of any subdivision certificate or occupation certificate for the next development application whichever occurs first. In addition each development application subsequent to the Stage 1 application must provide sufficient Infrastructure to meet the requirements of that proposed stage to Council's satisfaction.

5.1. The developer must lodge a bond in the form of an unconditional Bank Guarantee, not limited by time, in favour of Tweed Shire Council prior to issue of the first subdivision certificate or occupation certificate after stage 1 which ever occurs first. The bond is to be for the amount of $200,000. The bond will be held by Council until such time as 100 equivalent tenements are connected to the plant and the Council is satisfied that the treatment plant is being operated and maintained in a manner that ensures satisfactory treatment of Sewage. If the proponent or community association fails to comply with any consent conditions or other agency licence or approval which relate to the Sewerage system then Council at its discretion alone can use the bond to undertake such works and operations to operate, maintain and refurbish the Sewerage System.

6. The next development application after the Stage 1 application must include the final form of the Community Management Statement (CMS) for approval by Council.

7. The land designated "Tourism & Special Uses" in the south western corner of the development on Concept Plan Diagram 1 dated 16 January 2009 must not contain any permanent or temporary accommodation. Land uses in this area must be flood compatible, and not create any significant adverse impacts on surrounding land or local flood behaviour.

8. Solar powered hot water systems must be used for all development. The Community Management Statement and Design Guidelines are to stipulate that solar powered hot water systems must be utilised for all development within the Village.

9. A community bus is to be provided by the Developer and maintained for use by occupants of the Village. The bus is to be available for use prior to occupation of any residential premises for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The bus is to be a minimum size of eighteen passenger seats. The bus is to be maintained and fully funded by the Community Association with appropriate provisions provided in the Community Management Statement.

   No dog ,cat, rabbit, ferret or hard hoofed animal is permitted on the site

10. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any dog, cat, rabbit, ferret or hard hoofed animal (excluding any assistance animal permitted under the *Companion Animals Act, 1998 (NSW) and the Disability Discrimination Act, 1992 (Cth)*). The consent for the community title subdivision must make provision for a restrictive covenant acceptable to Council pursuant to section 88B of the Conveyancing Act and the CMS is to provide for an appropriate by-law to address this requirement.

11. Slab on ground dwellings must not be constructed in those areas that exceed a slope of 20% or more as nominated on sketch 103A – “slope analysis” prepared by Cardno dated 18 February 2009.

12. The Village Lots in the north eastern corner of the Village with boundaries on the eastern boundary of the Village are to be a minimum lot size of 1200 m^2. No dwelling must be constructed on these lots within the Agricultural Buffer or Asset Protection Zone.

[PSC0835]

Emergency Services

13. The Developer is to fund the upgrading of the existing NSW Rural Fire Service Category 1 tanker to a 3000 litre capacity to operate from the existing Kunghur RFS post. The Developer is also required to fund the following:

    (a) any improvements needed to the existing post to garage the upgraded tanker,
    (b) resurfacing of the existing carpark to ensure the vehicles of staff and volunteers are not obstructing the roadway; and
    (c) equipping the post with breathing apparatus.

    The above items are to be in place prior to release of the first stage subdivision certificate for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The Developer is responsible for obtaining and implementing any development consents/approvals required to fulfil the above requirements.

14. An Emergency Response Plan incorporating an early warning system must be prepared in consultation with the Local Emergency Management Committee. The Emergency Response Plan must be in place prior to release of any subdivision certificate for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The Developer is responsible for obtaining and implementing any development consents/approvals required to fulfil the above requirements. A copy of the Emergency Response Plan is to be submitted to Council.

Water Supply – General

15. The development will not at any stage have access to Tweed Shire Council's (TSC) water supply. Potable and recycled water supplies must be provided at each stage without any reliance on TSC water supply and must be self-sustaining. A minimum water supply of 225 litres per person per day (L/p/d) must be provided made up of a minimum of 75 L/p/d of recycled water and 150L/p/d/ of potable water.

16. All private water suppliers, as defined within the NSW Health *Private Water Supply Guidelines,* must register their supplies with Tweed Shire Council and pay the appropriate fee as adopted within Council's Fees and Charges Policy. Each supply must be the subject of inspection and assessment of monitoring records, as required, by an authorised officer of TSC.

17. The supply of potable and recycled water must at a minimum meet the requirements of the *Australian Drinking Water Quality Guidelines* 2004 by the National Health and Medical Research Council and the Natural Resource Management Ministerial Council and Australian *Guidelines for Water Recycling* by the Natural Resource Management Ministerial Council, Environment Protection and Heritage Council and the National Health and Medical Research Council. If more stringent requirements apply at any stage of the development, then those requirements must be met.

18. An appropriate and adequate water supply must be provided for fire-fighting purposes, to the satisfaction of the NSW Rural Fire Service and Tweed Shire Council,.

Water Supply – Recycled Water

19. A recycled water system must be provided to supply recycled water for the purposes of toilet flushing, residential outdoor usage, irrigation of public open space, the market garden area and fire fighting. Recycled water must not be used for irrigation of the Riparian Buffer Zone . The recycled water system must have the capacity to supply a minimum of 75 L/p/d for residential use plus all other non-residential demands. The reticulation system must be sized to permit fire fighting demand based on the criteria in Council's Subdivision Design Specification D11 Water Supply. The system must comply with the Australian Guidelines for Water Recycling and provide water that is fit for residential reuse, public irrigation, market gardening, and any other potential use.

20. The recycled water system is to provide the water supply for all toilet flushing. The system must be designed to have enough recycled water stored to provide for a breakdown of seven days duration (minimum) in the treatment plant supplying the recycled water. The recycled water system must also provide adequate storage of recycled water for a four hour fire fighting demand of 15L/s in addition to the seven day breakdown storage. A total storage of a minimum of 500kL is to be provided.

Water Supply – Potable Water

21. The development will not have any access to TSC water supply for potable water. The Developer must provide a potable water supply system that will ensure that the development will have no reliance upon the Tweed Shire Council Water Supply. The potable water supply design must be based upon a design minimum potable water demand of 150 L/p/d at all times.

22. The system will include the use of roof water tanks and other sources of potable water complying with the Australian Drinking Water Quality Guidelines 2004 by the National Health and Medical Research Council and the Natural Resource Management Ministerial Council. The potable water supply must not be used for toilet flushing and/or outdoor uses. Each dwelling and non residential building must incorporate standard water saving devices/water reduction fixtures.

Note: The Developer must determine whether Water Industry Competition (WIC) Act licenses are required for any part of the water supply system, and obtain such licenses if required.

23. Tank water supply will be supplemented by a trickle feed reticulation system which will operate at all times to meet total demands. The source of water for the trickle feed system must be a surface impoundment (Dam) to be constructed upstream of the STP, and an existing groundwater bore. The surface impoundment dam must have a minimum volume of 60 ML and a Catchment Area of a minimum of 10 ha. The Catchment Area must remain in a natural, undeveloped state and must be appropriately fenced to prevent animal and human disturbance. The Catchment Area must be located wholly within land owned by the Developer and must not include areas of land used for effluent irrigation or other structures.

24. A Catchment Management Plan must be submitted for approval by Council with any future development application for the construction of the dam or the next stage of development after Stage 1 to ensure the long term integrity of the Catchment Area. The Catchment Management Plan must also consider activities outside the designated catchment area that may adversely impact on the raw water quantity and quality.

25. The construction of the 60ML surface water impoundment dam must be the subject of further development consent. The Developer must obtain all necessary approvals/licenses required under the provisions of the Water Management Act.

26. A Water Supply Treatment Facility will be constructed on site to ensure that water sourced from catchment runoff and groundwater is suitable for potable use.

27. Each individual tenement within a multi-unit or mixed use building and each single dwelling house must have a separate tank with a trickle feed top up system to meet water supply requirements. The trickle feed system will have a activation trigger point at 25% of the tank capacity. When the water level in each tank is at 25% of tank capacity the tanks must be filled to 50% of tank capacity by the trickle feed system over a continuous period of 20 hours. The following minimum tank sizes and roof areas must be provided:

USE	Minimum Tank Capacity (kL)	Minimum Roof Area (m^2)
Residential		
1 bed apartment	20	60
2 bed apartment	25	120
3 bedroom dwelling	50	180
>3 bedroom dwelling	50	240
Commercial & Retail	0.2 per m^2 of GFA	0.5 GFA
Restaurant & Food Outlets	0.4 per m^2 of GFA	0.5 GFA

Notes:
GFA: Gross Floor Area

28. Each tank must be internally plumbed to provide water for potable purposes within each tenement or dwelling. This must not include water for toilet flushing purposes or for external usage which is to be provided from recycled effluent. The potable water supply system must be designed so that the first 1mm of roof runoff from each storm event will be diverted from the supply and wasted as first flush protection. Each tank must connect directly to an under-bench UV disinfection system which will be operated to prevent microbial contamination. Each tank system, including the disinfection equipment, must be inspected annually by a qualified person acting under the control of the Community Association, and repaired and maintained as required.

29. The Developer must comply with the requirements of the provisions of the Water Industry Competitions Act and, where required, obtain all necessary approvals and licenses for the provision and operation of water supply infrastructure, including recycled water.
30. Prior to the occupation of any future domestic, residential or commercial structure in any stage of the development provided with a water supply, including individual tank supplies, the Community Association must provide to each individual household and commercial tenement a Water Supply Management Plan. The Plan must be prepared in general accordance with the NSW Health *Private Water Supply Guidelines* and NSW Health *Guidance on use of rainwater tanks*. The Plan must include the responsibilities of both the occupier and the Community Association and 24 hour emergency contact details of the Community Association.

31. Approval for any subsequent stage of development after stage 1 must not be granted unless Council is satisfied of the adequacy of the technical performance of the water supply infrastructure and the sinking fund or financial arrangements required to cover the costs related to the water supply infrastructure for the next stage of the development.

Population Density Restrictions

32. The density of development must be restricted at each and any stage by reference to the capacity of the proposed sewerage treatment plant (STP) and in any event the population density of the development is not to exceed 1000 Persons at any time. Such population density includes all employees and any persons occupying any form of tourist accommodation.

Sewerage and Waste Water

33. The development will not have access to, or be serviced by, TSC sewerage systems. All sewerage and waste water systems for the development must be self sustaining. No separate on-site sewerage systems will be allowed or installed for individual dwellings or non-residential uses. No pump-out systems or disposal of sewage by tanker or other means will be permitted. All waste water generated by each and every stage of the development must be collected, treated, stored and reused within the development.

34. The Developer must provide an on-site waste water treatment system with sufficient capacity to treat waste water from the development and be designed such that it can handle low initial flows as well as the ultimate design load. The ultimate design load is limited to 1100 EP. The disposal of sewage by tanker from the development is not permitted at any stage. The effluent quality from the sewerage treatment plant must comply with the Australian Guidelines for Water Recycling for water for the residential reuse and public irrigation areas proposed and with the requirements set out in the table below as a minimum. If other more stringent quality criteria are required either by a licence under the POEO Act or any other statutory or licence provisions, then the higher standard must be met.

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<10mg/L
BOD	<10mg/L
Total Nitrogen	5mg/L 90%ile, 10mg/L 100%ile
Total Phosphorous	1mg/L 90%ile, 3mg/L 100%ile
Coliform/E.Coli	<1 cfu/100mL
Turbidity	<2 NTU 95%ile, <5 NTU max.
Total Dissolved Solids	<500 mg/L 90%ile <1000 mg/L 100%ile
Coliphages	<1 pfu/100mL
Clostridia	<1 cfu/100mL
Disinfection	Chlorine residual 0.2 – 2.0 mg/L

35. The Developer must determine if Water Industry Competition (WIC) Act licences are required for the sewerage collection and treatment system, and obtain such licences if required.

36. The waste water treatment system must be designed to have the ability to endure a breakdown of a minimum of seven days duration without overflow to the environment.

37. Sewerage pump stations must be designed to achieve a very low risk of overflow to the environment in accordance with the Department of Environment and Climate Change (DECC) Licensing Guidelines for Sewage Treatment Systems - Risk Assessment Guideline, and may require more storage than the minimums specified in Council's Design Specifications and WSAA 04 Pump Station Code of Australia.

38. The waste water treatment system must provide an effluent irrigation system on a suitable area of land with a minimum of 20ML of usable storage capacity (not including free board requirements and volume below bottom operational water level) for effluent storage during periods of wet weather and when the soil conditions are not suitable for irrigation. The storage must be designed that there can be no uncontrolled discharge of effluent but may make provision for a controlled precautionary discharge that will prevent uncontrolled over-topping of the storage to be made in no more than 25% of years, such discharges to be timed to coincide with peak flow events in the Tweed River so as to maximise dilution. Note: A licence under the POEO Act will be required to permit this discharge.

39. The sewage collection and pumping main systems must be designed and constructed in accordance with Tweed Shire Council Subdivision Design and Construction Specifications and relevant WSAA Codes and in accordance with the Department of Environment and Climate Change (DECC) Licensing Guidelines for Sewage Treatment Systems - Risk Assessment Guideline.

40. The STP will be designed to permit construction in stages to meet relevant population requirements of the development as it proceeds. During initial stages of development when sewage flows from the development will be low, such flows will be augmented by water provided by the Developer to ensure that septicity is avoided and treatment efficacy maintained. Pump out systems, tankering of waste water on public roads and individual on-site sewerage systems are not permitted.

41. Prior to the submission of any subsequent development application to create additional allotments or to expand the capacity of the STP, the Developer must submit a performance report to Council which provides details of the viability of the STP and effluent reuse facilities up to that time, particularly in respect of financial and technical performance.

    In addition, the Developer (or Community Association after its creation and incorporation) is to provide the Council with six monthly performance reports on the technical performance and financial viability of the STP and sewerage management system for the life of the development.

42. Approval for any subsequent stage of development after Stage 1 must not be granted unless Council is satisfied of the adequacy of the technical performance of the STP and the sinking fund financial viability required to cover the costs related to the STP and sewerage infrastructure for the next stage of the development.

43. Prior to the sale of any residential or commercial unit, the Developer must provide details of the community association accounts to all prospective purchasers.

Water Quality

44. The Developer must provide sufficient water quality management infrastructure to ensure compliance with Council's requirements, as set out in specification D7 of Section A5 of the TDCP.

45. No existing water bodies on the whole site are to be used for water quality management, and analysis must demonstrate that runoff entering such bodies after treatment already satisfies the requisite standards.

46. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from exposed areas of the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH and suspended solids (mg/L), and criteria must accord with the following table:

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<50mg/L

Any runoff to the Tweed River or to existing water bodies, watercourses and dams that breaches the above standards must be reported to Council and the report must include adaptive management measures proposed to rectify the breach. Water quality monitoring results must be available to Council on request.

47. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction/installation of the bridges or in-stream structures to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works until exposed areas are stabilised.

48. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the Tweed River or existing damson Lot 121 DP134446 unless surrounded by sediment control measures adequate to prevent escape of stockpiled material.

49. Permanent stormwater quality treatment must be provided in accordance with the following:

    (a) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

(b) Permanent stormwater quality treatment must comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

(c) The stormwater and site works must incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

50. The Community Management Statement must require the Community Association to be responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats, dogs, rabbits, ferrets and hard hoofed animals at any and all entrances to the development at all times.

Provision and Funding of Community Association Infrastructure

Legal Tenure Over The Infrastructure Land

51. Development Consent must not be granted to any future development application for any stage of the development and/or any development application or approval concerning the physical construction of the Community Association Infrastructure unless Council is satisfied that satisfactory legal arrangements are in place for access by the Developer and the Community Association (including easements and other necessary restrictions, covenants agreements or the like) to current Lot 4 in DP 737440 and the Infrastructure Land.

52. The Community Association must have a suitable legal tenure of all Community Association Infrastructure and over all Infrastructure Land containing Community Association Infrastructure including water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, environmental open space, asset protection zones, agricultural buffer zones, catchment area for water supply. Development Consent must not be granted to any Stage of the development after Stage 1 unless Council is satisfied with the arrangements for legal tenure of the Community Association Infrastructure and the Infrastructure land containing Community Association Infrastructure.

Creation of Sinking Fund by Developer before establishment of Community Association

53. Prior to the community title subdivision and the creation and incorporation of the Community Association and before any future development or stage after Stage 1, a sinking fund or funds must be established by the Developer which is to provide for the on going operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure. This sinking fund or funds is to be transferred to the Community Association upon its creation and incorporation so as to form the sinking fund required to be established and managed under the CLD Act.

Maintenance and Increase Of Sinking Fund And Infrastructure By Developer

54. Prior to any development or stage after Stage 1, the sinking fund or funds must be maintained by the Developer so that the on going operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure can occur notwithstanding that the Community Association is or may be incapable of levying sufficient funds to attend to the same.

55. Development consent or other approval must not be granted to any development of the Village and/or Community Land or Infrastructure Land after Stage 1 unless the Developer has provided evidence to Council, and Council is satisfied, that there are adequate funds in the sinking fund or funds to provide for the future needs for the ongoing operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure. If Council considers the funds are inadequate, the fund must be increased by the Developer by cash deposit by way of gift and not by way of loan. Evidence as to adequacy of the sinking funds must be in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, catchment for water supply, environmental open space and asset protection zones, agricultural buffers and riparian buffer zones.

56. Prior to the creation and incorporation of the Community Association and before any future development or stage after Stage 1, development consent or other approval must not be granted to any development of the Village, Community Land or Infrastructure Land after Stage 1 unless the Developer has provided evidence to Council, and Council is satisfied, that the performance of any Community Association Infrastructure is adequate.

Transfer Of Sinking Fund And Infrastructure to Community Association and Maintenance of Sinking Fund and Infrastructure After Transfer from Developer

57. Upon creation and incorporation of the Community Association, the Developer must transfer the sinking fund or funds for the Community Association Infrastructure to the Community Association. The Developer must not transfer the sinking fund or funds unless the Developer has provided evidence to Council, and Council is satisfied, that there are adequate funds in the sinking fund to provide for the future needs for Community Association Infrastructure. If Council considers the funds are inadequate, the fund must be increased by the Developer by cash deposit by way of gift and not by way of loan. Evidence as to adequacy of the sinking funds must be in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, catchment for water supply, environmental open space and asset protection zones, agricultural buffers and Riparian Buffer Zones.

58. Upon creation and incorporation of the Community Association, the Developer must, to the extent not already effected or implied by law, act to transfer the Community Association Infrastructure constructed at that time to the Community Association. The Developer must not transfer the Community Association Infrastructure to the Community Association unless the Developer has provided evidence to Council, and Council is satisfied, that the performance of any Community Association Infrastructure is adequate.

59. Subject to other conditions of this consent, after the creation and incorporation of the Community Association, the Community Association must be responsible for the operation, maintenance and eventual replacement of all Community Association Infrastructure. The Community Association must maintain the sinking fund or funds transferred to it by the Developer sufficient to cover all anticipated costs of the Community Association Infrastructure in perpetuity, and must appropriately levy residents and owners within the development to maintain this sinking fund at the required level at any specified time. Such matters mus be set out in the Community Management Statement.

60. Prior to the sale of any residential lot or dwelling or commercial unit, the Developer must provide details of the sinking fund or funds for the Community Association Infrastructure to all prospective purchasers

61. The Community Management Statement must include:

    (a) the requirement for the Community Association to maintain the sinking fund and report to Council upon its adequacy at periods of not less than three years, in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, environmental open space and asset protection zones, agriculture buffers and Riparian Buffer Zones.

    (b) the requirement that the Community Association make up any short fall in the sinking fund indentified by the report within 12 months.

62. Establishment, maintenance and management of any Bushfire Asset Protection Zones required in accordance with this consent and *Planning for Bushfire Protection Guidelines* must be the responsibility of the Community Association. This responsibility must be reflected within the Community Management Statement.

63. Maintenance, management and ongoing rehabilitation of environmental open space areas is to be undertaken by the Developer and the Community Association in accordance with the conditions of this consent and the approved Environmental Open Space Management Plan (EOSMP) and Threatened and Significant Protected Species Management Plan required at Stage 1. This responsibility including funding requirements and responsibilities must be reflected within the Community Management Statement.

64. Maintenance, management and ongoing rehabilitation of the agricultural buffers and asset protection zones are to be undertaken by the Developer and the Community Association in accordance with conditions of this consent and the approved agricultural buffer management plan and the asset protection zone management plan required at Stage 1. This responsibility including funding requirements and responsibilities must be reflected within the Community Management Statement.

Protected Archaeological Areas (NV1 and NV4)

65. The Protected Archaeological Areas as identified on the Village plan (Diagram 2) and Staging Plan (Diagram 3) are to be preserved with no work, building or sub-surface impacts to occur on these areas during construction or operational phases of the development and/or use of the site.

66. During the construction of adjacent areas of the development site (including road and sewer works), the Protected Archaeological Areas must be fenced to a standard required, and for the duration determined by the Tweed Byron Local Aboriginal Land Council.

Future Archaeological Investigation Areas (NV1, NV3, MS2 and NVIF2)

67. Prior to the lodgement of any future development application relating to development on land within an area of further archaeological investigation as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3):

    (a) an application pursuant to section 87 of the *National Parks and Wildlife Act, 1974* must be made to the Director-General of the Department of Environment and Climate Change (DECC) for a permit to investigate these areas for the purposes of discovering an Aboriginal object;
    (b) further archaeological test excavations should be carried out to determine their extent and significance by a suitably qualified archaeologist in consultation with the local aboriginal community.

68. The results of these s87 investigations will determine the degree of constraint or opportunity the investigation areas might represent to the proposal and are to be provided to Council with any development application for any further stage affecting the areas.

69. The section 87 applications identified in condition 67 above must:

    (a) be accompanied by a copy of the Aboriginal Heritage Report and an Archaeological Research Design for the proposed investigation area; and
    (b) identify the interest of the Tweed Byron Local Aboriginal Land Council and other registered Aboriginal stakeholders.

S90 Aboriginal Heritage Impact Permit Items (NV2, NV5 and NVIF1)

70. Prior to the lodgement of any future development application relating to development on land that requires a "s90 Aboriginal Heritage Impact Permit (with collection) Item" as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3), an application pursuant to section 90 of the *National Parks and Wildlife Act, 1974* must be made to the Director-General of the DECC for a permit (with collection) to remove these items from their current location. Any artefacts in those areas are to be collected and interpreted in accordance with that permit and in consultation with the Local Aboriginal Community.

71. The s90 application identified in condition 70 above must:

    (a) be accompanied by a separate application for a care agreement for Aboriginal objects; and

    (b) identify the interest of the Tweed Byron Local Aboriginal Land Council and the other registered Aboriginal stakeholders.

Aboriginal Heritage Display

72. The Aboriginal artefacts collected under any s90 permit (condition 70) and retrieved under any s87 permit (condition 67) must be retained at a secure location on the site and form part of an Aboriginal Heritage Display to be included in that application.

73. The location and the nature of the Aboriginal Heritage Display must be developed in consultation with the relevant Aboriginal stakeholders. In this regard consultation with relevant Aboriginal stakeholders must be undertaken regarding the history of the whole site as it relates to Aboriginal culture and heritage. Cultural and heritage issues are to be included in the Aboriginal Heritage Display where considered appropriate by the aboriginal stakeholders.

73.1 The village green, the sports and market area, the market garden and all streets are to be named from the Aboriginal dialect appropriate to the area with the English translation underneath. These names are to be submitted to the Aboriginal Advisory Committee for approval before being actioned.

Additional Archaeological Investigations

74. Prior to the granting of consent to any further stage relating to development of the sewerage and water supply infrastructure, including but not limited to gravity feed trenches between the STP and the irrigation areas as identified on the Concept Plan (Diagram 1), and any surface water impoundment (dam), an archaeological survey of these areas must be carried out to determine whether there are any Aboriginal objects in these areas.

Aboriginal Cultural Heritage and Assessment Management Plan

75 (1) The Developer must amend the Aboriginal Cultural Heritage Management Plan, before any physical earthworks commence. This **amendment** to include:

(a) undertaking further consultation with the Aboriginal Community to provide all knowledge holders an opportunity to comment prior to the commencement of Stage 1 works, and

(b) an appropriately funded inspection by the Aboriginal Community and an archaeologist after each stage of earthworks, including initial ground clearance.